

a first dermatological composition comprising an effective amount of a skin renewing acid in a cosmetically acceptable vehicle, wherein the skin renewing acid is selected from the group consisting of hydroxy carboxylic acids, keto acids, hydroxybenzoic acids, and combinations thereof, and the pH of the first dermatological composition is between about 2.5 and about 4; and

a second dermatological composition, which neutralizes said first dermatological composition, comprising an alkaline agent suitable for use in a skin care composition and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the alkaline agent is sodium bicarbonate or sodium hydroxide, and the pH of the second dermatological composition is greater than about 7 to about 12; and

a means for applying the first and second compositions, the compositions being adapted for sequential application to the skin of the consumer, wherein the first composition and the second composition are of a consistency that the compositions are not rinsed off of the skin, and that makeup or other cosmetic is capable of being applied thereafter to the skin;

whereby said enhancement is selected from the group consisting of reduction of lines and wrinkles, reduction of pore size, exfoliation of the skin, elimination of acne, toning of the skin, enhancement of skin radiancy, and softer, smoother skin with a more uniform appearance; the first and second dermatological compositions causing said enhancement.

### **REMARKS**

Reconsideration of the subject application is respectfully requested in view of the preceding amendments and for the following reasons.

In the outstanding Official Action, the amendment filed on October 5, 2001 was objected to as allegedly introducing new matter. In particular, the Examiner objects to the claim wording "not removed from the skin" as not being supported by the original disclosure. Similarly, claims 10-26, 31-33 and 36-46 were rejected under 35 U.S.C. § 112, first paragraph, for this reason.

Applicant respectfully disagrees with the Examiner's position. However, in the interest of advancing the prosecution of the application, the words "not removed from the skin" have been deleted from the independent claims, as suggested by the Examiner. Accordingly, withdrawal of the objection and § 112 rejection is believed to be warranted.

In view of the foregoing, Applicant respectfully asserts that method claims 10-15, 24-26, 31-33, 36-40 and 43-45, which were not rejected in view of any prior art, are in condition for immediate allowance. Allowance of these claims is therefore respectfully requested.

In the Action, kit claims 16-21, 23 and 46 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,720,949 to Davis ("Davis") and claim 22 was rejected under 35 U.S.C. § 103(a) as being obvious over Davis. Claim 21 was also rejected under 35 U.S.C. § 103(a) as being obvious over Davis in view of U.S. Patent No. 4,797,273 to Linn et al. ("Linn") and Database REGISTRY on STN for polysorbate-20 ("Registry"). Similarly, kit claims 41 and 42 were rejected under 35 U.S.C. § 103(a) as being obvious in view of the combined teachings of Davis and U.S. Patent No. 5,242,433 to Smith et al. ("Smith"). Applicant respectfully traverses the foregoing rejections and asserts that the afore-cited references, whether viewed alone or in combination, neither disclose nor suggest Applicant's presently claimed invention for at least the following reasons.

The foregoing rejected claims include the limitation that the first dermatological composition and the second dermatological composition are of a consistency that the compositions are not rinsed off of the skin and that makeup or other cosmetic is capable of being applied thereafter to the skin. These limitations refer to the consistency of the first and second dermatological compositions, not to a future intended use. Thus, the products as claimed herein have the advantageous property that without rinsing the compositions from the skin, makeup can be applied thereafter to the skin. The consistency recited in these claims is very different from that of Davis' cosmetic mask, which is of a consistency that, without rinsing/removal from the skin, make-up could not be applied thereafter.

In particular, in describing the “cosmetic mask,” Davis teaches that a suitable first composition is a cream or gel comprising, in part, a thickening agent effective to provide a viscosity of from about 50,000 to about 1 million cps at 25°C and a suitable second composition is a gel comprising, in part, a thickening agent effective to provide a viscosity of from about 25,000 to about 500,000 cps at 25°C (Col. 3, lines 30-66 of Davis). The first and second compositions are combined to give the cosmetic mask product. The thick cream or gel compositions of Davis must be applied to the skin using a spatula or other similar means. (Col. 2, line 42) and do not flow appreciably when applied to the skin (Col. 3, line 12; Col. 3, line 41). The mask of David results in a thick layer on the skin which subsequently is removed from the skin by means of a cloth or scraper (Col. 1, lines 35-49 of Davis). Moreover, at Col. 1, lines 20-49, Davis even appears to distinguish its cosmetic mask from products that are generally massaged into the skin of the consumer and, thus, not rinsed/removed.

Applicant’s claimed kit does not result in the formation of a thick mask upon the skin. Unlike the mask composition of Davis, after the Applicant’s neutralizing step is applied to the skin, makeup or other cosmetic can be applied as usual. As described in Applicant’s specification at page 11:

The formulation of step 1 is applied all over the area of the skin to be treated, preferably in a circular motion, and allowed to dry for approximately 3 minutes. The formulation of step 2 is then applied in the same manner and allowed to dry completely. After step 2 is dried, moisturizer, sunscreen and/or makeup may be applied as usual. Neither formulation should be rinsed off of the skin.

In view of the foregoing, it is respectfully asserted that Davis teaches away from Applicant’s invention and one skilled in the art seeking to develop Applicant’s invention would not even be motivated to look to Davis for guidance.

The addition of Linn, Smith or the Registry reference, alone or in combination, does not cure the shortcomings of Davis. For example, Linn and the Registry reference were cited as merely relating to polysorbate and Smith as disclosing pads. Accordingly, reconsideration and

withdrawal of these rejections are believed to be warranted.

Kit claims 16-21 and 46 were also rejected under 35 U.S.C. § 102(b) as being anticipated by WO 98/22078 (U.S. 6,171,347 B1 was cited as an English language equivalent (“Kunz”)). Similarly, kit claims 16-21, 41-42 and 46 were rejected under § 103(a) as being obvious in view of the combined teachings of Kunz and Smith. Lastly, kit claims 22-23 were rejected under 35 U.S.C. § 103(a) as being obvious in view of the combined teachings of Kunz and U.S. Patent 5,304,370 to Hawkins et al. (“Hawkins”). Applicant respectfully traverses these rejections and asserts that these references, alone or in combination, neither disclose nor suggest Applicant’s presently claimed invention for at least the following reasons.

Applicant’s claims include a kit for the treatment of the skin of a consumer comprising a first *dermatological* composition and a second *dermatological* composition. The first dermatological composition comprises an effective amount of an acid suitable as a skin renewing acid and has a pH between about 2.5 and about 4. The second dermatological composition, which comprises an alkaline agent, is applied to the skin following the first composition, thus neutralizing the first composition.

In contrast to the present invention, Kunz teaches a method and composition for *reductively removing color from dyed hair*. The kit described therein is a multi-component kit for coloring hair and then later removing the color. *Kunz does not teach nor suggest a dermatological composition.* The first composition of Kunz is an oxidative hair dye applied to the hair for the purpose of adjusting hair color. This first composition may be acidic or basic. After the oxidative dye composition has been applied to the hair, it is rinsed off and the hair dried. The consumer now has a hair color which has been adjusted by the first composition and can be worn that way until the consumer decides to remove the color.

Kunz then teaches that after a period of time, the consumer may remove the hair color using a stripping composition. The stripping composition has an acidic pH of 1.8-6 -- the second

composition of Kunz is acidic. The stripping composition is not applied directly after the oxidative dying composition in order to neutralize it, but rather is applied after the hair has been rinsed and a period of time has passed. One would not apply the oxidative dying and reductive stripping compositions of Kunz to the skin to achieve the benefits of the present invention.

In maintaining the rejection over Kunz, the Examiner refers to the “dermatological” limitation in the claims and contends that “the preamble of a claim does not provide patentability.” Applicant respectfully points out that the “dermatological” limitation appears in the body of Applicant’s claims and describes the first and second compositions. As used herein, the term dermatological refers to a composition useful for topical application to the skin of a human (page 4). The Examiner seems to be suggesting that one should apply the oxidative hair dye of Kunz to the skin and face or that one should apply an acidic stripping composition of Kunz to the skin and face in order to achieve the benefits of the present invention. This simply is not the case. The first and second compositions of Kunz are expressly for coloring and removal of color from fibers such as hair. Kunz does not teach or suggest a dermatological composition or kit, as claimed herein, and one skilled in the art seeking to develop Applicant’s invention would not even be motivated to look to this reference for guidance.

Applicant further respectfully asserts that the addition of Smith, merely disclosing pads, and/or Hawkins, disclosing a hair relaxer, does not cure the short comings of Kunz for the foregoing reasons.

In furtherance to the above, it is respectfully noted that Applicant’s claimed kit is for treating the skin of a consumer by enhancement of skin appearance, whereby said enhancement is selected from the group consisting of reduction of lines and wrinkles, reduction of pore size, exfoliation of the skin, elimination of acne, toning of the skin, enhancement of skin radiancy, and softer, smoother skin with a more uniform appearance, as supported in Applicant’s specification at page 12. Applicant’s first and second dermatological compositions cause this enhancement. It is respectfully asserted that the afore-cited references, whether viewed alone or in any

combination, neither disclose nor suggest such an advantageous kit.

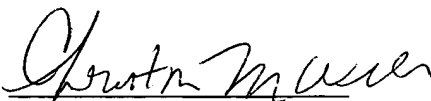
In view of the amendments and remarks set forth herein, the application is believed to be in condition for immediate allowance and such favorable action is earnestly solicited.

The Examiner is encouraged to telephone the undersigned at 212-908-6320 if it is believed that a discussion would help to advance the prosecution of the application.

No fee is believed to be required herewith. The Office is hereby authorized to charge any required fees or credit any overpayments to Deposit Account No. 11-0600.

Respectfully submitted,  
KENYON & KENYON

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

IN THE CLAIMS:

Please amend claims 10, 16, 37, 40-41 and 44-46 as follows:

10. (thrice amended) A method for the treatment of the skin of a consumer comprising the steps of:

- a) applying to the skin a first dermatological composition comprising an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of the first dermatological composition is between about 2.5 and about 4; and
- b) neutralizing said first composition by applying to the skin a second dermatological composition comprising an alkaline agent suitable for use in a skin care composition, and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second dermatological composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of [and not removed from] the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

16. (thrice amended) A kit for treating [the treatment of] the skin of a consumer by enhancement of skin appearance, comprising:

- a first dermatological composition comprising an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of the first dermatological composition is between about 2.5 and about 4;
- a second dermatological composition, which neutralizes said first dermatological

composition, comprising an alkaline agent suitable for use in a skin care composition and about 0.1 to about 10 percent of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second dermatological composition is greater than about 7 to about 12; and

a means for applying the first and second compositions, the compositions being adapted for sequential application to the skin of the consumer, wherein the first composition and the second composition are of a consistency that the compositions are not rinsed off of [and not removed from] the skin, [wherein] and that makeup or other cosmetic is capable of being applied thereafter to the skin;

whereby said enhancement is selected from the group consisting of reduction of lines and wrinkles, reduction of pore size, exfoliation of the skin, elimination of acne, toning of the skin, enhancement of skin radiancy, and softer, smoother skin with a more uniform appearance; the first and second dermatological compositions causing said enhancement.

37. (twice amended) A method for treatment of the skin of a consumer comprising the steps of:

a) applying to the skin a first dermatological composition comprising an effective amount of an acid selected from the group consisting of alpha hydroxy acid, beta hydroxy acid and trichloroacetic acid in a cosmetically acceptable vehicle, wherein the pH of the first dermatological composition is between about 2.5 and about 4; and

b) neutralizing said first composition by applying to the skin a second dermatological composition comprising an alkaline agent selected from the group consisting of sodium bicarbonate and sodium hydroxide, and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second dermatological composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of [and not removed from] the skin, wherein makeup or



other cosmetic is capable of being applied thereafter to the skin.

40. (twice amended) A method for treatment of the skin of a consumer comprising the steps of:

a) applying to the skin a first dermatological composition consisting essentially of an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of the first dermatological composition is between about 2.5 and about 4; and

b) neutralizing said first composition by applying to the skin a second dermatological composition consisting essentially of an alkaline agent suitable for use in a skin care composition, and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second dermatological composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of [and not removed from] the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

41. (twice amended) A kit for treating [the treatment of] the skin of a consumer by enhancement of skin appearance, comprising:

a first dermatological composition comprising an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of the first dermatological composition is between about 2.5 and about 4;

a second dermatological composition, which neutralizes said first dermatological composition, comprising an alkaline agent suitable for use in a skin care composition and about 0.1 to about 10 percent of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second dermatological composition is greater than about 7 to about 12; and

single-use pads for applying the first and second compositions, the compositions being

adapted for sequential application to the skin of the consumer, wherein the first composition and the second composition are of a consistency that the compositions are not rinsed off of [and not removed from] the skin after application to the skin by use of a single-use pad, [wherein] and that makeup or other cosmetic is capable of being applied thereafter to the skin;

whereby said enhancement is selected from the group consisting of reduction of lines and wrinkles, reduction of pore size, exfoliation of the skin, elimination of acne, toning of the skin, enhancement of skin radiancy, and softer, smoother skin with a more uniform appearance; the first and second dermatological compositions causing said enhancement.

44. (twice amended) A method for treatment of the skin of a consumer consisting essentially of the steps of:

a) applying to the skin a first dermatological composition comprising an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of the first dermatological composition is between about 2.5 and about 4; and

b) neutralizing said first composition by applying to the skin a second dermatological composition comprising an alkaline agent suitable for use in a skin care composition, and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second dermatological composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of [and not removed from] the skin, wherein the first composition and the second composition are each applied with a pad, and makeup or other cosmetic is capable of being applied thereafter to the skin.

45. (amended) A method for the treatment of the skin of a consumer comprising the steps of:

a) applying to the skin a first dermatological composition comprising an effective amount of a skin renewing acid in a cosmetically acceptable vehicle, wherein the skin renewing acid is selected from the group consisting of hydroxy carboxylic acids, keto acids, hydroxybenzoic acids, and combinations thereof, and the pH of the first dermatological composition is between about 2.5 and about 4; and

b) neutralizing said first composition by applying to the skin a second dermatological composition comprising an alkaline agent suitable for use in a skin care composition and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the alkaline agent is sodium bicarbonate or sodium hydroxide, and the pH of the second composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of [and not removed from] the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

46. (amended) A kit for [the treatment of] treating the skin of a consumer by enhancement of skin appearance, comprising:

a first dermatological composition comprising an effective amount of a skin renewing acid in a cosmetically acceptable vehicle, wherein the skin renewing acid is selected from the group consisting of hydroxy carboxylic acids, keto acids, hydroxybenzoic acids, and combinations thereof, and the pH of the first dermatological composition is between about 2.5 and about 4; and

a second dermatological composition, which neutralizes said first dermatological composition, comprising an alkaline agent suitable for use in a skin care composition and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the alkaline agent is sodium bicarbonate or sodium hydroxide, and the pH of the second dermatological composition is greater than about 7 to about 12; and

a means for applying the first and second compositions, the compositions being adapted

- for sequential application to the skin of the consumer, wherein the first composition and the second composition are of a consistency that the compositions are not rinsed off of [and not removed from] the skin, [wherein] and that makeup or other cosmetic is capable of being applied thereafter to the skin;

whereby said enhancement is selected from the group consisting of reduction of lines and wrinkles, reduction of pore size, exfoliation of the skin, elimination of acne, toning of the skin, enhancement of skin radiancy, and softer, smoother skin with a more uniform appearance; the first and second dermatological compositions causing said enhancement.